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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W. -- Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Contact
GEN Docket No. 90-314
ET Docket No. 92-100 /

Dear Ms. Searcy:

Wiley, Rein & Fielding hereby files an original and two copies of a notification of an ex parte contact in GEN Docket No. 90-314 and ET Docket 92-100. Between November 16 and November 18, 1992, copies of the attached document were distributed to the following individuals: Chairman Alfred C. Sikes, Terry Haines, Kenneth Robinson, Charla Rath, Commissioner James H. Quello, Brian F. Fontes, Lauren Belvin, Commissioner Sherrie P. Marshall, Kathleen Q. Abernathy, Commissioner Andrew C. Barrett, Byron F. Marchant, Madelon A. Kuchera, Commissioner Ervin S. Duggan, Linda L. Oliver, John C. Hollar, Robert M. Pepper, Renee Licht, Cheryl A. Tritt, Gerald P. Vaughn, John Cimko, Jr., Thomas P. Stanley, Tom Mooring, David R. Siddall, Ralph A. Haller, and Beverly G. Baker.

If any questions should arise concerning this notification, please contact the undersigned at (202) 828-3182.

Respectfully submitted,



Eric W. DeSilva

Encl.

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WILEY, REIN & FIELDING

SUMMARY OF OPENING COMMENTS NOTICE OF PROPOSED RULEMAKING ON PERSONAL COMMUNICATIONS SERVICES

**GEN Docket 90-314
ET Docket 92-100**

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November 16, 1992

FOREWORD

On August 14, 1992, the FCC released a Notice of Proposed Rulemaking soliciting comment on new Personal Communications Services ("PCS").¹ The initial round of comments on the Notice were filed on November 9, 1992, and are briefly summarized herein. The summaries are divided into three sections on licensed 2 GHz PCS (TAB A), unlicensed 2 GHz PCS systems (TAB B), and 900 MHz narrowband PCS systems (TAB C). The comments within each tab are arranged alphabetically by company or organization name.

We have done our best to represent each commenter's positions accurately on a range of issues within two pages and in a consistent format. Due to space and time constraints, however, many supporting arguments have been truncated and rephrased to conserve space. Accordingly, in all cases, it is highly advisable to review the actual commenter's text. All summaries have page references to the actual commenter's text.

¹ Amendment of the Commission's Rules To Establish New Personal Communications Services, FCC 92-333 (Aug. 14, 1992).

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**ADELPHIA COMMUNICATIONS CORPORATION
NEWCHANNELS CORPORATION**
Comments on 2 GHz Licensed PCS

Interest: Multiple cable system operators that hold experimental licenses and are testing various aspects of PCS .

Band plan:

- Recommend licensing as many PCS providers in a market as possible, limited only by spectrum considerations. (pp. 2-3). Suggest allocating 120 MHz to accommodate four or five licensees. (p. 4).
- Support proposal to give licensees flexibility within their frequency blocks to channelize them as they desire. (pp. 5-6).

Amount of spectrum per licensed system:

- Support 30 MHz allocation for each licensee. (p. 3).

Service areas:

- Suggest that the cellular MSA and RSA designations be used, stating that such a scheme is more economically sound and procompetitive than plans using larger service areas. (p. 5).

Cellular carrier participation:

- Favor exclusion of cellular operators from becoming PCS licensees inside their service areas, since cellular systems can already provide PCS. (p. 11).

Local exchange carrier participation:

- State that local telephone companies should not be specifically barred from becoming PCS licensees within their own telephone service areas simply because they provide telephone service in the PCS market; however, propose that Commission adopt structural and non-structural safeguards, such as a separate subsidiary requirement and joint cost accounting, to control anticompetitive potential. (pp. 11-12).
- Oppose 10 MHz set-aside for local telephone companies, allowing them to acquire the 10 MHz from the allocated PCS spectrum, or allowing them to lease or purchase the 10 MHz in the PCS aftermarket. (p. 12).

Licensing policies:

- Oppose specific limits on holding multiple licenses, stating

that marketplace should determine optimum arrangement. (p. 6).

- Agree that long license term and reasonable renewal expectancy are needed in order to attract huge investment which PCS will require. (p. 7).
- State that lottery applicants should be required to demonstrate their qualifications and eligibility at the time they file their applications. (pp. 13-14).
- Suggest "front end" requirements, including: very high non-refundable application filing fee; legally binding firm financial commitment; prohibition on applicant having any interest in another application for the same market; prohibition on alienation of any ownership interest in any pending application or its applicant; submission of detailed "real-party-in-interest" certification; aggressive construction and operational benchmarks; and reasonable holding period. (pp. 14-17).

Regulatory status:

- Urge Commission to adopt regulatory structure that allows PCS to develop in both common carrier and private carrier environments. (pp. 7-10).
- Suggest jointly allocating all available spectrum to both common carrier and private service; applicants would specify the authorization they were requesting, and the license issued would so designate the regulatory class of system. (p. 10).
- Agree that PCS carriers should have federally protected right to interconnection with PSTN on non-discriminatory basis; recommend that Commission take a more active role with respect to interconnection. (pp. 17-18).

Plan for relocation of existing users:

- Support very short transition period and no restrictions on voluntary negotiations, with the marketplace controlling developments. (p. 19).
- State that grounds for existing user to protest must be clarified, and assert that, once a relocation has been completed, the process is irreversible. (p. 19).

Technical standards:

- Recommend that Commission not adopt any height or power limits for PCS base stations other than those that may be necessary to control inter-system interference. (p. 20).

ADVANCED CORDLESS TECHNOLOGIES, INC.
Comments on 2 GHz Licensed PCS

Interest: Direct successor of Cellular 21, Inc., which filed the Petition for Rulemaking that led to the Notice of Inquiry in Docket 90-314; promoter of PCS implementation.

Service areas:

- None. ACT proposes that carriers and service providers should cover the areas they deem economically attractive. (p. 8)

Cellular carrier participation:

- Supports total exclusion of cellular carriers from the 2 GHz range, including the Part 15 segment. (p. 7)
- Should the FCC permit cellular participation in PCS in their own markets, cellular carriers should be required to relinquish the additional spectrum they received from the cellular reserve. This spectrum should be made available to new cellular carriers to compete with the cellular duopoly. (p. 7)

Local exchange carrier participation:

- Supports the allocation of 10 MHz to the LECs in their authorized areas but believes more severe power restrictions will probably be needed to prevent overlap. (p. 7)

Licensing policies:

- Believes there should be no licensing mechanism at all -- recommends Part 15 for the entire band. (p. 8)
- Objects to the FCC's proposal in Section 99.13 to permit foreign entities and individuals to hold PCS licenses. Should the FCC permit foreign ownership of PCS licenses, Part 22 licenses should have their restrictions lifted as well. (p. 6)

Technical standards:

- The proposed 2 GHz rules are unworkable. The Part 15 concepts as proposed in Section 15.253 are more suitable. (p. 5)
- To avoid interference with existing 2 GHz users, ACT proposes that each private microwave receiving station be equipped with a "beacon" transmitter of controlled

coverage. The beacons would be financed by the PCS providers and removed when the time for band sharing expires. (p. 8)

Other issues:

- Believes that bundling the 900 MHz narrowband PCS and 2 GHz broadband PCS into one proceeding is an error. (p. 2)

**ADVANCED MOBILECOMM TECHNOLOGIES, INC. & DIGITAL
SPREAD SPECTRUM TECHNOLOGIES, INC.**

Comments on 2 GHz Licensed PCS

Interest: Developers of PCS technologies.

Licensing policies:

- One 30 MHz PCS license in each market should receive a license conditioned upon satisfaction of Open Network Architecture and Expanded Interconnection obligations. This licensee would serve as a host for the provision of services by non-licensed PCS providers. (pp. 11-13).
- An Open Network Architecture license will allow new service providers to enter the PCS market after the initial licensing phase, thereby spurring innovation and competition. (pp. 12-13).

ALLTEL COMPANIES
Comments on 2 GHz Licensed PCS

Interest: Local exchange carrier and cellular carrier.

Band plan:

- Supports licensing of five PCS providers per market, each allocated 20 MHz plus a 5 MHz reserve. (pp. 15-16).

Service areas:

- Supports use of cellular MSAs and RSAs for PCS licensing because of the smaller size of these areas, the distinction between rural and non-rural markets, the flexibility of small markets to become larger through mergers, and competitive equality with existing cellular areas. (pp. 12-15).

Cellular carrier participation:

- Cellular carriers should be eligible for PCS licenses within or outside of their service areas because competition will be encouraged, not impeded, and provision of PCS service will be expedited. (pp. 5-7).

Local exchange carrier participation:

- LECs should be eligible for PCS licenses within their service areas because LECs -- particularly those in non-metropolitan areas -- must be able to implement cost effective technologies to meet their universal service requirements and to respond to increasing competition from alternative service and infrastructure providers. (pp. 8-11).
- Alternatively, ALLTEL supports the FCC proposal to allow LECs to obtain some 2 GHz spectrum for use within their service areas, but less than the amount proposed for other licensees. (p. 11).

Regulatory status:

- PCS should be regulated on a common carrier basis because new PCS services will compete with LEC and cellular service provided pursuant to common carrier rules. (pp. 16-17).
- FCC should apply PCS rules equally to all PCS providers, including cellular providers and LECs. (p. 17).
- Supports the FCC's proposal to revise Section 22.930 of their rules to allow cellular licensees to provide PCS-

type services without a notification requirement. (p. 7)

Other:

- Supports the FCC's broad definition of PCS as a "family of mobile services" and states that FCC should not limit the use of PCS spectrum by requiring that fixed services generally be allowed only as ancillary to mobile PCS services. (pp. 4-5).

AMERICAN GAS ASSOCIATION
Comments on 2 GHz Licensed PCS

Interest:

- Trade association comprised of 250 natural gas distribution and transmission companies.

Technical standards:

- States that it is satisfied with the Commission's decision to use the interference criteria found in EIA/TIA Bulletin TSB10-E. (p. 2)

Other:

- States that it will submit detailed comments in ET Docket 92-9 on issues relating to negotiations and compensation regarding the existing fixed microwave users. (p. 2)
- Argues that emerging technologies companies that can demonstrate technologies that will not require relocating existing users should receive a preference from the Commission. (p. 2)

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
Comments on 2 GHz Licensed PCS

Interest: Trade association for the private carrier mobile telecommunications industry.

Band plan:

- FCC should authorize five PCS licensees per market (p. 4).

Service areas:

- PCS license areas should be based on MSAs and RSAs because these areas are well defined, familiar, and were established for mobile communications. (pp. 7-9).

Licensing policies:

- Requests that SMR operators be allocated some portion of PCS spectrum for the implementation of advanced technologies. (pp. 6-7).

Regulatory status:

- Provided that the FCC adopts a competitive licensing structure (e.g., five licensees per market), PCS should be classified as a private land mobile service in accordance with the Communications Act. (pp. 3-5).

AMERICAN PERSONAL COMMUNICATIONS
Comments on 2 GHz Licensed PCS

Interest: New entrant tentatively granted a pioneer's preference

Band plan:

- Two licensed allocations at 1850-1870/1930-1950 MHz and 1870-1890/1950-1970 MHz, an unlicensed allocation at 1910-1930, and 1890-1910/1970-1990 MHz held in reserve. (p. 6)
- Opposes 10 MHz allocations for LECs. (Cover letter at 2)
- A spectrum reserve is needed and preserves flexibility to authorize MSS at 1970+ MHz. (p. 20)
- More than two licensees will render PCS uneconomic and using smaller blocks will incur consolidation costs. (pp. 15-18)
- Two PCS licensees will produce a robustly competitive marketplace and lower cellular rates. (p. 14)

Amount of spectrum per licensed system:

- 40 MHz blocks per licensee are needed, use existing separation, and will permit both TDD and FDD. (p. 7-8)
- 40 MHz is needed to accommodate demand; 40 MHz ensures parity with cellular (PCS will serve 4x as many customers and shares spectrum); and in the largest markets, only 25.7 MHz of the 40 MHz will be available. (pp. 8-19)

Service areas:

- Supports MTAs because MTAs: are defined by commerce; require only 98 licensing decisions; promote roaming; are similar to regions evolving in cellular; and foster small business entry through franchising. (pp. 21-25, 35-39)
- Opposes national licensing as stifling diversity; concentrating too much power; and slowing service to rural areas. (pp. 25-28)
- Opposes smaller licensing areas: successes in speed of cellular deployment are attributable to comparative hearings and service in rural areas is often best provided in conjunction with an MSA. (pp. 28-32)

Cellular carrier participation:

- Opposes cellular entry (and LECs with cellular holdings) in-region, but has proposed a 20 percent benchmark to determine cross ownership using both proportionate ownership interests and proportionate POP overlap. (Cover letter at 1)

- Cellular carriers have 25 MHz of clear spectrum, existing plant, name recognition, consumer acceptance, can provide PCS now, will compete with new entrants, and will have no incentive to develop PCS further. (Cover letter at 1-2)

Licensing policies:

- Favors streamlined comparative procedures for licensing, since lotteries promote speculation and do not attempt to choose the most qualified entrants. (pp. 39-42)
- In order to ease burden of hearings, recommends high filing fees (to make PCS self-financing), use of expert evaluators, and procedures to facilitate settlements. (p. 43) Specifics of the hearing procedures are detailed at pp. 44-48.
- Opposes limits on the total number of licenses held, although APC recommends that no entity should hold more than one license in a single market (pp. 65-67)

Regulatory status:

- Favors common carrier status with flexibility to offer private services (and identical treatment for cellular carriers). (p. 49)

Technical standards:

- Interconnection: PCS licensees should have federally protected right of interconnection. (pp. 52-54)
- PCS to microwave interference: See Attachment E; includes changes to TSB10E to protect "availability" not "fade margin;" requirement to specify all base station in application; and blanket site licensing as long as sites are prior coordinated and no FAA notice is required. (p. 55)
- Height and power limits: Proposes 7 W mobile, 500 W base limits and no height limits. (pp. 57-58)
- Service contours: Suggests using Hata model with provision for real propagation; more limited HAAT averaging. (p. 59)
- Standards: Opposes FCC-mandated standards body and interoperability/roaming standards. (p. 61-62)

Other issues:

- Supports 75 percent coverage for build-out, similar to cellular. (p. 60)
- Supports allocation of PCS support spectrum for microwave links in the 37-39.5 GHz band. (pp. 63-65)

AMERICAN PETROLEUM INSTITUTE
Comments on 2 GHz Licensed PCS

Interest: National trade association representing companies involved in oil and gas industries; many members operate point-to-point microwave stations in the Private Operational-Fixed Microwave Service (POFS).

Band plan:

- Opposes reallocation of spectrum to PCS, stating that it is not in the public interest. (pp. 3-5).
- If Commission proceeds, however, suggests total allocation of 60 MHz for three PCS entities per market. (pp. 6-7).

Amount of spectrum per licensed system:

- Suggests 20 MHz allocations per system to minimize harmful impact on existing POFS operations. (pp. 5-6).

Service areas:

- Does not advocate particular plan, but states that Commission should adopt option that best promotes compatibility and competition. (pp. 26-27).

Plan for relocation of existing users:

- Calls for establishment of reasonable period during which incumbent POFS licensees retain primary status for use of frequencies in 2 GHz bands; any relocation would be voluntary during this period. (p. 8).
- At expiration of voluntary relocation period, supports open framework for involuntary relocation; plan should allow incumbent POFS licensee to maintain primary status until PCS proponent provides adequate compensation and suitable replacement facilities. (p. 8).
- Urges allowing POFS operators to maintain primary status in 2 GHz band for absolute period of five years, after which indefinite, involuntary relocation period would take effect. POFS licensees would remain primary during involuntary period as well. (p. 9).
- States that Commission must ensure that non-conforming systems grandfathered when Commission adopted Part 94 of its rules are protected to same degree as all other POFS systems. (p. 10).
- Asserts that incumbent licensees must receive adequate compensation for their displacement; supports "open"

negotiations that allow market forces to control. (p. 20).

- States that relocation costs should take into account expenses a licensee must incur to ensure entire microwave system will continue to function at high degree of reliability. (p. 21).
- Believes that new user that requests involuntary relocation of an existing POFS licensee must assume responsibility for all relocation costs; proposed replacement facilities must provide equal or better reliability than existing system. (p. 22).
- Asserts that PCS proponent must pay costs of transition, including expenses such as replacement of analog equipment with digital, and all expenses related to maintaining system integrity and reliability. (p. 22).
- States that independent arbitrator must be included in transition plan. (p. 23).

Technical standards:

- States that significant technical details of proposed PCS systems should be filed with Commission so that incumbent POFS operators can solve or forestall potential interference problems. (pp. 10-11).
- Believes that PCS applicants should specify every PCS base station antenna site within the proposed area of operations prior to any Commission grant of system authorization. (p. 11).
- Suggests setting transmitter output power limitation of 5 watts per PCS base station and 1 watt for handheld transceivers. (p. 12).
- Endorses utilization of EIA Bulletin 10-E requirements as an interference standard. (p. 13).
- Suggests establishment of interim engineering practice to help minimize interference problems between PCS and POFS operations in shared environment. (p. 14).
- Submits technical proposal by which it believes potential interference to POFS systems created by PCS may be calculated and forestalled. (p. 14).
- States that Commission should take measures to obtain further data on possible health problems associated with use of handheld transmitters; at a minimum, Commission should ensure that only PCS equipment that meets current ANSI standard is authorized. (p. 28).

AT&T
Comments on 2 GHz Licensed PCS

Interest: Common carrier long distance telephone company;
possible provider of PCS services.

Amount of spectrum per licensed system:

- FCC should establish five service providers for each geographic serving area, with each provider allocated 20 MHz of spectrum. (pp. 10-11).

Service areas:

- Opposes nationwide licenses because competition and innovation would be reduced. (p. 12).
- Supports use of LATA-bounded service area to define PCS markets because a diversity of licensees would result, without fragmentation of the licensing process. (pp. 12-13).

Licensing policies:

- Supports FCC's proposal to permit market-based negotiation for the transfer of newly allocated spectrum because licensees are encouraged to use spectrum efficiently and the need for regulatory oversight is reduced. (pp. 2-3).
- In the absence of authority to implement competitive bidding procedures, the FCC should implement a modified lottery proceeding in which applicants must meet strict entry requirements and post a significant performance bond. (p. 4).
- Lottery winners would gain the exclusive right to obtain a license for unassigned spectrum in a given market and to negotiate with existing licensees for additional spectrum. (pp. 4-5).
- To reduce further the allure of speculation, filing fees should be non-refundable and licensees should be required to meet three year construction deadlines. (pp. 5-6).

Plan for relocation of existing users:

- The transition period for existing 2 GHz users to continue to occupy frequency bands on a co-primary basis with new services should be as brief as reasonably practicable. To encourage incumbent users to negotiate, the FCC should deem expired any current license that is contested and has not expired under its own terms by

0 0015

January 1, 1997. (pp. 6-8).

AMERITECH
Comments on 2 GHz Licensed PCS

Interest: Bell operating company

Band plan:

- The 1850-1865/1930-1945 MHz and 1895-1910/1975-1990 MHz bands should be allocated for two high power wide area "tier 1" 2 GHz service providers using TDD or FDD. (7-10)
- The 1870-1890 MHz and 1950-1970 MHz bands should be used for two low power microcellular "tier 2" 2 GHz service providers using TDD, like DECT or CT-2. (10-12)
- Supports allocating 1910-1930 MHz for unlicensed uses. (12)
- The 1865-1870, 1890-1895, 1945-1950 and 1970-1975 MHz bands should be held in reserve and allocated after 5 years to the service most in need. (10-11)

Service areas:

- BTAs should be used (both tier 1 and tier 2): BTAs provide the greatest opportunity for broadening entry, diversity, and innovation, and minimize the costs of start-up. (17-18)

Cellular carrier participation:

- Given the spectrum available to Tier 1 PCS providers, the competition evident in the cellular industry, and cellular capacity constraints due to an analog customer base, rendering cellular ineligible makes little sense. (14-15)
- If a ban is adopted, it must be carefully tailored in the following respects: (1) it should be of limited duration (e.g., 5 years); (2) it should apply only to cellular operators, not minority partners or non-operating partners; (3) the ban should only apply to directly competitive services (i.e., tier 1 services). (15-16)

Local exchange carrier participation:

- No reasons exist to bar LECs from participating and: (1) LECs with cellular holdings have shown no evidence of anticompetitive conduct; (2) the participation of LECs will facilitate the timely advent of PCS; (3) LECs need new spectrum to continue to offer cost-effective services to existing and proposed customers. (17)

Licensing policies:

- Lotteries are inefficient because they promote speculation -- this will be worse in PCS due to media attention. (30)

- Auctions maximize efficiency because they are easy to administer, limit the number of applications filed, have a low risk of post-selection litigation, discourage egregious speculation, and efficiently allocate resources. (31-33)
- Comparative hearings are inefficient because they require time and resources and carry the risk of post-selection litigation, even though they are effective at getting licenses into the hands of those that need them. (33-34)
- Lotteries are the best choice besides auctions, if the FCC does not pick "contingent" winners and if all participants are required to submit a refundable deposit, a firm financial commitment (irrevocable, independent and market specific) and a comprehensive engineering proposal. (36-39)
- No limits should be placed on post-grant transfers. (36, 40)
- Licensees must begin service in one year. (39)

Regulatory status:

- PCS appears to be "nondominant common carriage." (22)
- However the FCC chooses to regulate new services, the FCC must ensure regulatory parity for cellular. (22-23)
- If new PCS (and SMR and Part 22) providers are common carriers, the FCC should preempt any regulation that restricts provision of authorized services, imposes service or area limitations, or initiates traditional rate regulation upon these competitive services. (23)
- Suggests changes to Part 22, including: deleting prior notification requirement for cellular provision of PCS; deleting the AMPS requirement as of 12/31/99; ensuring that no equal access or "long distance" restrictions apply to PCS or Part 22; deleting the structural separation rules; and generally promoting regulatory parity. (23-29)
- Non-structural separation is unnecessary and would hamper LECs in facilities replacement (vs new services). (20-21)

Technical standards:

- For Tier 1, 15 watt mobile power limit, 500 watt (EIRP) limit on base stations. (10) For Tier 2, 0.25 watt mobile power limit, 3 watt base station limit. (11)
- Recommends preempting state regulation of the terms and conditions of interconnection; and proposes that, since interconnection arrangements needed may vary, a PCS provider should be able to select from a tariff open interface arrangements. (19)